



December 12, 2012

Re: SB-975
Testimony before the House Insurance Committee

Mr. Chair, Committee members,

On behalf of the Department of Civil Rights, I ask that you not report this bill. While there are legitimate questions about when and how the religious freedom of medical professionals can be reconciled with patients' rights in a constitutionally balanced way, this bill is far broader than that discussion would allow for. It does not distinguish between religious/philosophical/moral opinions about the medical procedure vs. those about the morality of the person receiving it. It would disproportionately impact women's health issues (and at least for the time being decisions being made by men). It is unclear how this bill might affect end of life decisions, but it certainly would appear to move considerable decision making authority from patients to doctors.

The bill's key term "conscience" is not sufficiently defined. It is either too broad or too narrow, depending on how it is read – and therefore unconstitutionally vague. The bill's direct reference to "God or the tenants of an established religion" raises questions about the First Amendment's admonition that government "make no law respecting an establishment of religion."

I'm going to pose just a few questions that have answers which I think demonstrate how this bill is ill advised, unconstitutional and bad public policy. I'm also going to include some questions that I honestly don't know the answers to.

If you answer any of these questions with a yes, you have a responsibility to oppose the bill's passage. And, Mr. Chair, Representatives, if (like me) your answer to even just one question is "I don't know" -- then I respectfully assert it is irresponsible to vote in favor of this bill before you get the answer.

- Is it possible that a doctor, nurse, or insurer can refuse to provide services to a gay AIDS patient?
- Could a hospice or nursing home insist on providing extraordinary end of life measures to a patient over his or her express wishes? Could the nursing home next door refuse to provide the same measures (as contrary to the designs of "the creator") expressed in the directive of one of their patients?
- Will individual employees of each nursing home then be able to refuse to follow their employer's policy because it violates their "moral principles . . . philosophy or belief system"?

- Would a clinic have the ability to treat persons with sexually transmitted diseases only if they are married? ... only if their spouse had the STD first?
- Can a doctor whose "recognized philosophy" condemns mixing of races refuse to treat the child of a mixed race couple? ... the mother prior to or during delivery?
- Clearly this bill would permit an individual pharmacy to refuse to provide contraceptives to a customer, or a pharmacist to instruct the customer to come back the next day when a 'less moral' pharmacist will be on duty – but could a pharmacist who believes protected sex is permissible but only in marriage require proof of the marriage before providing birth control pills? Would a police report showing rape be required for filling an RU486 prescription?
- Is it up to every hospital to ensure that they have a full emergency room staff on duty whose conscience allows them to participate in aborting a fetus in order to save an accident victim's life? Are they therefore permitted to ask the question as part of an employment interview?
- Many of this bill's sponsors are also sponsors of HB-4769/SB-701, the "anti-Sharia" laws, if one of those bills also passes would courts be permitted to enforce this law only with respect to religions and philosophies that are not "foreign"?
- Must a medical school permit a student to opt out of operating with, or training under, members of the opposite sex?
- May an insurance provider exclude injuries sustained while engaged in "immoral" activities? Would this include hunting?

There are many, MANY, more such questions, but I think this is a fair start. Perhaps, in time and with well-reasoned discussion and after due consideration these questions can be appropriately resolved. If this passes now, we may never know.

I, and MDCR, believe that the language before you today requires that many if not all of these questions be answered yes. At best though, I believe the answers to the questions are unclear. What is clear is that if you can't answer every one of these questions "absolutely not" then the most important question for today will be "do you support this bill?" In response to that question there is only one responsible answer: "absolutely not".

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